

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

United States of America,) CRIMINAL NO. 4:00-256-CMC
)
)
v.) **OPINION and ORDER**
)
)
Patrick Dewayne Todd,)
)
)
Defendant.)
_____)

This matter is before the court on Defendant's *pro se* motion for reconsideration. ECF No. 102. Defendant seeks reconsideration of the denial of his motion for relief under 28 U.S.C. § 2255 based upon "the Department of Justice[']s recent change in position" regarding *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011).

"[T]he Federal Rules of Criminal Procedure do not specifically provide for motions for reconsideration and prescribe the time in which they must be filed." *Nilson Van & Storage Co. v. Marsh*, 755 F.2d 362, 364 (4th Cir.1985). To the extent this court has jurisdiction to consider the motion for reconsideration,¹ as noted by the Government in its summary judgment motion, even assuming Defendant's North Carolina conviction might not qualify as a predicate offense after *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011), Defendant's three (3) South Carolina convictions for second-degree burglary are still valid predicate offenses which qualify Defendant as an Armed Career Criminal.

Accordingly, Defendant's motion is **denied**.

¹The Supreme Court has held that a motion for rehearing or reconsideration extends the time for filing a notice of appeal in a criminal case if the motion is filed before the order sought to be reconsidered becomes final, and the period for filing an appeal starts after the motion for reconsideration has been ruled on. See *United States v. Ibarra*, 502 U.S. 1 (1991); *United States v. Christy*, 3 F.3d 765, 767 n.1 (4th Cir.1993). The order from which Defendant seeks reconsideration was entered June 28, 2012. ECF No. 99. Accordingly, it would appear Defendant's motion is untimely filed.

IT IS SO ORDERED.

s/ Cameron McGowan Currie

CAMERON McGOWAN CURRIE

UNITED STATES DISTRICT JUDGE

Columbia, South Carolina

September 18, 2012